

403(b) **FINAL** REGULATIONS

Let's Explore the
Final **403(b)** Regulations

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Contact Information

Robert J. Architect
TEGE

Washington, DC

202-283-9634

Robert.J.Architect@irs.gov

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403(b) Final Regulations

- ▶ Forty-three years since the last issuance of 403(b) regulations
- ▶ Package includes regulations under 414(c)

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403(b) Regulations ¹ Published 7/26/2007

General Effective Date

- ◆ Taxable years beginning after
December 31, 2008
- ◆ Notable exceptions

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1 – [1.403\(b\)-11\(a\)](#)

Delayed Effective Dates²

- ▶ Collective bargaining situations
- ▶ Churches sponsoring 403(b)s
- ▶ Removal of certain permissively excluded groups for universal availability purposes
- ▶ Certain governmental 403(b)s
 - ▶ For limited universal availability exclusions

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2 – [1.403\(b\)-11\(b\)-\(d\)](#)

Grandfathered Items

- ▶ Annuities – In-service distributions
- ▶ Incidental life insurance contracts
- ▶ Post Rev. Rul. 90-24 contract exchanges
 - ▶ Prior 90-24s grandfathered

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3 – [1.403\(b\)-11\(e\)-\(g\)](#)

Primary Purpose

▶ Theme

- ▶ To diminish the extent to which 403(b)s differ from other salary reduction arrangements
 - ▶ 401(k)s
 - ▶ 457(b) governmental eligibles

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Regulation Highlights⁴

► First and Foremost

- A 403(b) program must be maintained pursuant to a written DC plan
- Both form and operation satisfy 403(b) and contain all terms & conditions for eligibility, limitations and benefits under the plan
- See model plan provisions Revenue Procedure 2007-71

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4 – [1.403\(b\)-3\(b\)\(3\)](#) and [1.403\(b\)-3\(d\)\(1\)\(i\)&\(ii\)](#)

Revenue Procedure 40 2007-71

- Issued 11/27/07
- Published 12/17/07 in IRB 2007-51
 - Effective 12/17/07
 - Model plan language for public school use
 - Timeliness of plan/amendments
 - Guidance on transitional period

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ERISA Implications

- Non-ERISA 403(b)s
 - Written plan – Not automatically ERISA
 - See www.dol.gov/ebsa for guidance -
DOL Field Advisory Bulletin 2007-2
issued 7/24/2007
- Governments not subject to ERISA

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Regulation Highlights⁵

- ▶ Underlying annuities/custodial accounts
 - ▶ In addition to language on 401(a)(30), 401(a)(31), and 401(g) (annuities only):

Funding contract must also have language satisfying 401(a)(9) and the incidental benefit requirements.

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5- [1.403\(b\)-3\(a\)\(4\)-\(8\)](#)

Regulation Highlights

- Vesting is recognized – non-electives only ⁶
- Elective deferral ordering – 402(g)(1), 402(g)(7), 414(v) ⁷
 - 402(g)(7) – formula required
 - See examples ⁸
- Disaggregation 401(a)/403(b) ⁹
- Post-severance elective deferrals ¹⁰
 - Regular, sick and vacation pay

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6 - [1.403\(b\)-3\(d\)\(2\)](#)

7 - [1.403\(b\)-4\(c\)\(3\)\(iv\)](#)

8 - [1.403\(b\)-4\(c\)\(5\) examples #4, 11 and 12](#)

9 - [1.403\(b\)-4\(b\)\(2\)](#)

10 - [1.403\(b\)-3\(b\)\(4\)\(ii\)](#)

Regulation Highlights^{11, 12}

- ▶ Determining years of service
 - ▶ 402(g)(7) – 15 year catch-up
 - ▶ Includible compensation for contribution limit (lesser of 100% of includible compensation or overall limit)
- ▶ Years of service = Employee's annual work period/not taxable year

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11 - [1.403\(b\)-4\(e\)\(2\)](#)

12 - [1.403\(b\)-4\(e\)\(5\)](#) and [1.403\(b\)-4\(e\)\(9\) examples 1](#) and [2](#)

Regulation Highlights

- ▶ Non-elective contributions for the 5 taxable years after employment plus end-of-taxable year when employment ceases¹³
- ▶ No additional contributions after death¹⁴

See examples cited in
Addendum

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13 - [1.403\(b\)-4\(d\)\(1\)](#)

14 - [1.403\(b\)-3\(d\)\(2\) examples 1, 2, and 3](#)

Regulation Highlights¹⁵

When using the 5-year post-retirement non-elective provision in a non-governmental environment...

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15 - [1.403\(b\)-4\(d\)\(2\) examples 1](#) and [2](#)

Regulation Highlights

Assure that in accordance with 1.401(a)(4)-10(b) and under the facts and circumstances that contributions made for those satisfying the minimum age and service requirements **and...**

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Regulation Highlights

...who retire by the designated date **do not discriminate** in favor of former employees who are highly compensated employees (HCEs).

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Regulation Highlights

- For 403(b) and 402(g) purposes, elective deferrals are limited to contributions under a cash or deferred election as defined under 401(k)¹⁶
- Hardship distributions follow 401(k) rules and safe harbors¹⁷

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16 – [1.402\(g\)\(3\)-1\(b\)](#)

17 – [1.403\(b\)-6\(d\)\(2\)](#)

Regulation Highlights

Elective Non-Discrimination/ Universal Availability¹⁸

- ▶ Effective opportunity needed to satisfy universal availability¹⁹
 - ▶ Meaningful notice
 - ▶ Election timing
- ▶ Universal availability generally applies separately to each common law entity²⁰

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18 - [1.403\(b\)-5\(b\)\(1\)](#)

19 - [1.403\(b\)-5\(b\)\(2\)](#)

20 - [1.403\(b\)-5\(b\)\(3\)](#)

Regulation Highlights

Effective opportunity to make cash or deferred election to a 403(b) in order to satisfy the universal availability requirement embraces a 401(k) anti-conditioning approach

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Regulation Highlights

Universal Availability

Permissive Exclusions

- Employees eligible under other deferral plans²¹
- Non-resident aliens
- Students
- Those who normally work less than 20 hours per week²²

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21 - [1.403\(b\)-5\(b\)\(4\)\(ii\)\(A\)](#)

22 - [1.403\(b\)-5\(b\)\(4\)\(ii\)\(E\)](#)

Regulation Highlights²³

- ▶ For determining if an employee works < 20 hours/week so that they can be permissively excluded from universal eligibility:
 - ▶ On date of hire, employer must reasonably expect employee to work < 1000 hours for ensuing 12-month period

AND...

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23 - 1.403(b)-5(b)(4)(iii)(B)

Regulation Highlights

- ▶ For determining if an employee works < 20 hours/week so that they can be permissively excluded from universal eligibility:

AND...

- ▶ For every subsequent plan year or 12-month period the employee actually worked < 1000 hours in the preceding 12-month period

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Regulation Highlights

- ▶ So, a 1000 hour standard...
- ▶ If subject to ERISA see 1.403(b)-5(b)(4)(iii)(B)(2) of the regulations

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Regulation Highlights²⁴

Regulations **DO NOT** adopt permissive exclusions for universal availability concerning:

- Collective bargaining employees
- Visiting professors
- Employees who have taken a vow of poverty
- Employees who make a one-time election to participate in a governmental non-403(b) plan.

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24 - [1.403\(b\)-11\(d\)\(1\)&\(2\)](#)

Regulation Highlights²⁵

Non-Elective Non-Discrimination

- Regulations **DO NOT** adopt good faith reasonable standard of Notice 89-23 for purposes of non-elective non-discrimination
- Now 401(a)(4) and 401(m) testing as in a qualified plan
- Not relevant for governments

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25 - [1.403\(b\)-5\(a\)\(1\)](#)

Regulation Highlights²⁶

- ▶ Amounts not subject to 403(b)(7) and 403(b)(11) distribution restrictions may be distributed only:
 - ▶ After severance
 - ▶ Occurrence of an event
 - ▶ After a fixed number of years
 - ▶ Attainment of a stated age, or
 - ▶ Disability

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26 - [1.403\(b\)-6\(b\)](#)

Regulation Highlights²⁷

Contribution amounts must be transferred to providers within a period no longer than is reasonable for proper plan administration.

EXAMPLE

➔ **Transferring elective deferrals within 15 business days following the month in which these amounts would have been paid to the participant**

ERISA – tighter standards

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27 - [1.403\(b\)-8\(b\)](#)

Regulation Highlights

- No more separate contracts of incidental life insurance with 403(b) ²⁸
 - Exception – contracts issued up to 60 days after publication of the regulations are grandfathered
 - Incidental benefits permitted
 - Death
 - Disability ²⁹

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28 - [1.403\(b\)-8\(c\)\(2\)](#)

29 - [1.403\(b\)-6\(g\)](#)

Regulation Highlights³⁰

As with 457(b) governmental eligibles, 403(b) plan provisions may permit **plan termination** with distribution and rollover in cases where no successor 403(b) arrangement for 12 months.

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30 - [1.403\(b\)-10\(a\)\(1\)](#)

Regulation Highlights³¹

- ▶ Severance from employment occurs where employee:
 - ▶ No longer works for eligible employer, or
 - ▶ Works in a capacity that is not employment with an eligible employer

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31 - [1.403\(b\)-6\(h\)](#)

Regulation Highlights ³²

Old

Revenue Ruling 90-24 –
annuity-to-annuity transfers
with no employer
involvement

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32 - [1.403\(b\)-10\(b\)\(1\)](#)

Regulation Highlights

The New Transfer Regime ³³

- Exchanges Within same plan
 - Plan permits
 - Benefit not diminished
 - Undiminished distribution restrictions
 - Employer and issuer enter into information sharing agreement

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33 - [1.403\(b\)-10\(b\)\(2\)](#)

Regulation Highlights

The New Transfer Regime ³⁴

- ▶ Plan-to-plan
 - ▶ Participant is employee or former employee of employer for receiving plan
 - ▶ Transferor and receiving plans permit
 - ▶ Benefit not diminished
 - ▶ Undiminished distribution restrictions

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34 - [1.403\(b\)-10\(b\)\(3\)](#)

Regulation Highlights³⁵

- ▶ Church 403(b)(9) retirement income accounts:
 - ▶ There must not only be a plan, but it must state intent to constitute a retirement income account
 - ▶ Exclusive benefit rule

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35 – [1.403\(b\)-9\(a\)\(2\)](#)

Regulation Highlights³⁶

Even if a 403(b)(9) retirement income account invested in stock of regulated investment company, it is not a custodial account.

Therefore

No § 4973 excise tax

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36 - [1.403\(b\)-9\(a\)\(4\)](#)

Regulation Highlights

403(b)(9) retirement income
accounts:

Trust is granted tax-exempt status

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37 - [1.403\(b\)-9\(a\)\(7\)](#)

Regulation Highlights³⁸

- ▶ 414(c) Common Control – For all tax-exempt organizations for all 414(c) purposes:
 - ▶ Addresses aggregation to determine employer for all control group benefit purposes for all exempt organizations
 - ▶ Except governments and steeple churches

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38 – [1.414\(c\)-5\(a\)](#)

Regulation Highlights³⁹

- ▶ 414(c) Common Control – For all tax-exempt organizations for all 414(c) purposes:
 - ▶ Based upon an 80% director/trustee common control test
 - ▶ Permissive aggregation for those tax-exempts with common exempt purpose

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IRC 403(b) Tax-Sheltered Annuity Plans

A 403(b) tax-sheltered annuity (TSA) plan is a retirement plan offered by [public schools](#) and [certain tax-exempt organizations](#). An individual's 403(b) annuity can be obtained only under an employer's TSA plan.

General Questions

Who can establish a 403(b) plan?
 You are allowed to have a 403(b) plan if you are a:

- Public school, college or university or
- Charitable entity tax-exempt under section 501(c)(3) of the Code.

How do 403(b) plans work?
 Basically, 403(b) plans are similar to 401(k) plans. Just as with a 401(k) plan, a 403(b) plan lets employees defer some of their salary. In this case, their deferred money goes to a 403(b) plan sponsored by the employer.

What are the advantages of participating in a 403(b) plan?
 There are significant tax advantages for participants in a 403(b) tax-sheltered annuity:

- Contributions to a 403(b) annuity are tax deferred,
- Earnings are tax deferred, and
- The annuity is portable.

Ask Bob Architect!!!
 Bob Architect, Senior Tax Law Specialist and the resident expert on 403(b) plans, receives many questions while presenting the latest 403(b) information to organizations. See the most frequently asked questions and Bob's answers here.

Resources:

Guidance:
[403\(b\) Final Regulations](#)
 Issued July XX, 2007, with a general effective date of taxable years beginning after December 31, 2008.

Overview
[News Articles](#)
[Presentations](#)

Related Guidance:
[Notice 2007-7, Pension Protection Act Guidance](#)
[Final 415 Regulations](#)
[Notice 2006-5, Automatic Rollover](#)

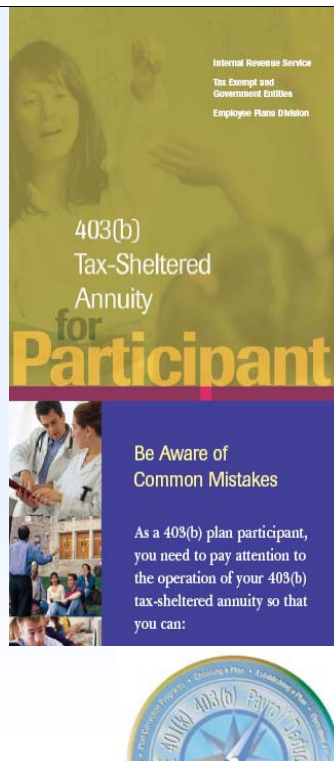
Prior Law Guidance
[Exam Guidelines](#)
[I.T. Reg. 1.403\(b\)-1](#)
[I.T. Reg. 1.403\(b\)-2](#)
[Correcting Plan Errors](#)

Publications:
[Choose a Retirement Plan for](#)

This button provides information on starting and maintaining a retirement plan including what kinds of plans are available, how they work and the benefits of having a retirement plan.

Request Publication 4482

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Request Publication 4483

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Internal Revenue Service
Tax Exempt and
Government Entities
Employee Plans Division

403(b)
Tax-Sheltered
Annuity Plan
for **Sponsor**

**Be Aware of
Common Mistakes**

As a 403(b) plan sponsor/
employer, you need to pay
attention to the operation
of your 403(b) tax-sheltered
annuity plan so that you can:

- be compliant with the law,



Request Publication 4484

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Request Publication 4484

PLAN FEATURE COMPARISON CHART – easy, quick-glance format to help you pick the plan that's good for you and your employees!

PLAN	KEY ADVANTAGE	SPONSOR/ELIGIBLE EMPLOYER	EMPLOYER'S ROLE	CONTRIBUTORS TO THE PLAN
Payroll Deduction IRA	easy to set up and maintain	any employer	<ul style="list-style-type: none"> - arrange for employees to make payroll deduction contributions - transmit contributions for employees to IRA - no annual filing requirement 	employee can decide how much to contribute any time
SEP	easy to set up and maintain	any employer	<ul style="list-style-type: none"> - set up plan - employer may use Form 5305-SEP - transmit contributions for employees to IRA - generally, no annual filing requirement - bank or financial institution handles most of the paperwork 	employer can decide whether to make contri- butions year-to-year

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Questions



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Addendum

1. 1.403(b)-11(a)
2. 1.403(b)-11(b)-(d)
3. 1.403(b)-11(e)-(g)
4. 1.403(b)-3(b)(3) and 1.403(b)-3(d)(1)(i)&(ii)
5. 1.403(b)-3(a)(4)-(8)
6. 1.403(b)-3(d)(2)
7. 1.403(b)-4(c)(3)(iv)
8. 1.403(b)-4(c)(5) examples 4, 11 and 12
9. 1.403(b)-4(b)(2)
10. 1.403(b)-3(b)(4)(ii)

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Addendum

11. 1.403(b)-4(e)(2)
12. 1.403(b)- 4(e)(5) & 1.403(b)- 4(e)(9) examples 1&2
13. 1.403(b)-4(d)(1)
14. 1.403(b)-4(d)(2) examples 1, 2, and 3
15. 1.403(b)-4(d)(2) examples 1 and 2
16. 1.402(g)(3)-1(b)
17. 1.403(b)-6(d)(2)
18. 1.403(b)-5(b)(1)
19. 1.403(b)-5(b)(2)
20. 1.403(b)-5(b)(3)

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Addendum

21. 1.403(b)-5(b)(4)(ii)(A)
22. 1.403(b)-5(b)(4)(ii)(E)
23. 1.403(b)-5(b)(4)(iii)(B)
24. 1.403(b)-11(d)(1)&(2)
25. 1.403(b)-5(a)(1)
26. 1.403(b)-6(b)
27. 1.403(b)-8(b)
28. 1.403(b)-8(c)(2)
29. 1.403(b)-6(g)
30. 1.403(b)-10(a)(1)

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Addendum

31. 1.403(b)-6(h)
32. 1.403(b)-10(b)(1)
33. 1.403(b)-10(b)(2)
34. 1.403(b)-10(b)(3)
35. 1.403(b)-9(a)(2)
36. 1.403(b)-9(a)(4)
37. 1.403(b)-9(a)(7)
38. 1.414(c)-5(a)
39. 1.414(c)-5(b)
40. Rev Proc 2007-71

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